prove that ! By no doubtful parole testimony. I prove it by the hand and seal of the parties themselves, as will be seen by turning to the second volume of plaintiff's printing, page 168; and I call the attention of the Court to it for the purpose of showing that it is not with Charles Good car, but these very licensees, with whom Mr. Day is conducting this litigation.

The Court (endeavoring to find the refereses)—

with the pipelation of these very polaries by work with a first process of the pr

a very harmite detail of the process by which solts makes his, he differs from the process in which Goodyear makes his: that is, the corruption or shiring is effected, in thoselyear sense, he stratching the rubber upon the cloth, and then the contraction of the rubber shirs, or corrugates or draws up the cloth; and in Solt's case, that same result is cheeted by palling the cloth by main strength by land, diagonally, and then placing the rubber cords across the cloth in the opposite direction, and also diagonally. Both seek to bring the cloth into a compressed sinte, which corrugates it. They are the same exact goods, but minutely differing processes. To patent a process is one thing: but when you find he claims to potent the fabric of sairred or corrugated goods by any process, than Solts has stolen it bodly, or as we say, on the face of the patent, piratically—unusing of course, in a legal sense, larcery. Now then, what is Goodyon's claim: "I, Chorles Goodyon have invented a new and useful —what! a process! No—"unew and useful description of goods," going right straight to the state, independent of the process; and that new and useful goods is denomicated "corrugated, or shirred goods." Well, then, he tells us, as he must tell us, how he makes it—vol. I, derindants printing, page 7, (at the end.) "Although I do not intend in this specification to claim any particular appearants," Ke. I when it of the process and containing, page 7, (at the cod.) "Although I do not intend in this specification to claim any particular appearants," Ke. I who it of the Med Coories and one of the process and of claims.

the covenant that he will stamp all his goods, and the covenant that he will keep account books. I will refer to the proof, as well as to the covenant that settlement before the Court, in its terms, within the frame of that bill; inasmuch as they did not bring that settlement before the Court, in its terms, within the frame of that bill; inasmuch as they did not rely on that settlement as an estopel, and plead the performance of it on our part; masmuch as they gave my client no chance at all to deny, on his calls, that they have performed any part of the conditions which they undertook to perform, I respectfully submit that, on that account, the settlement cannot be condopyed as an estopel in this case. I submit, in the next place, that the same general considerations which I have been instring upon, pats an end to every one of these covenants by their very terms, and they cease to be a master of estopel. By the very terms of these covenants it is provided, that if Goodvent aids and about, or if Goodvent in any way fails effectually to protect, or if he counives with those who come into competition with Mr. Day for the want of that protection, every covenant ipso facto, ex instantic, comes to an Goolyear in any way fails effectually to protect, or if he connives with those who come into competition with Mr. Day for the want of that protection, every covenant ipso facto, to instanti, comes to an end and censes to be operative. Looking into the evidence before this couit, it is perfectly certain, that it would not be possible for a Jersey jury, or a Massachusetts jury, or a Penastivania jury, or a fury anywhere, where common sense is recognized and intelligence prevails, to dovise any form of escape from this last proposition. But, may it please your honors, if they are so very stremous for technical law, suppose we treat them to a little technical law, suppose we treat them to a little technical law, and then I submit that moon all the authorities it is perfectly clear, and has been settled by a line of cases from the third of James, when such old common law lawyers as Kenyon, Bullock, Thessinger, and other lawyers, who illustrated and made respectable the declining period of the old common law lawyers as Kenyon, Bullock, Thessinger, and other lawyers, who illustrated and made respectable the declining period of the old common law lawyers as Kenyon, but there is not one covenant in this paper, from beginning to ond, which would not be brought as an estept upon Goodyear, for Day performed his covenant or he did nothing. I submit that the authorities are entirely consistent, and although I should be serry to stand here and defend Mr. Day upoa such technicalities as this, when he can be defended on such grounds as a master can stand upon; yet, if deserving all the conties they pretend to have in the case, they lay hold on common law escapels, it my they have not got them. There is not another case of estopel, such as this would be, in all the history of common law, from Lord Kerr downwards—not a case from beginning to end—not one. This covenant that I have been insisting aroun, then, we will leave entirely out of view. We disposed of that upon its facts. They have got, then, what! Why the acceptance, and j mise by the very sanguine representations by which the patentee had deceived himself, he had, therefore, very readily deceived himself, he had, therefore, very readily deceive his victim. It is not at all extraordinary nor strange that fraudulent patents have been granted; and to this hour it has been a common transaction, in cases of infringement on such alleged patents, to agree on some terms of accepting a license from a patentee and to agree to pay forit. I say, it is not at all extraordinary or strange. How long it has been that the courts of law have had occasion to consider such transactions, and pass their opinions upon them as estopels between the parties; and, therefore, it is not surprising that we are able to find a series of adjudications for at least fifty or sixty years from Shepperd's Tonchstone, through general treaties, adjudications at law and chancery, directly upon the settlement of patent controversies by which this whole controversy of estopel is elicited, expounded, determined, and made susceptible of an easy and satisfactory application to, and disposal of, this case. In the first place, it is settled that if there is an acknowledgment or admission in terms, hy oither of the parties, under senl, that the patent is valid, that will in a direct action for the enforcement of it conclude the parties; but that doctrine would not have a farthing's worth of application to this case. The paintiff does not bring a bill here ex directo, eraying you to insist upon an estopel, for that turns it into mere evidence at law. He does not di that. On the contrary, he goes at large, and in so many

noise, the truth of that which he has esilaterally asserted, and which the defendant has been drawn in to give credit to. When that falls, he has simply made a misrepresentation, and then he has no remedy whatsoever. The plaintiff knows whether he is, or is not, the original and first inventor; and if he tells a plausible story, surrounds himself by affidavits and by witnesses, and dives his victim into a covenant, and the defendant buys his article, then, if he can afterwards show that though he is a violator of a patent, he was himself deceived; why on earth should he not do it! How can he have intended to conclude but by a covenant, that he would not contest; for there is exactly one way that a defendant may conclude himself, and that is by a covenant that he will not contest. If your honors will give me leave I will turn to the decisions that strike me as conclusive, in Platt on Convenants, 574, 575, and 576; and Addison on Centracts 144 and 185. That decision has been cited and referred to in Westminister Hall, and followed ever since; in the 4th of Meeson and Webby, 295, and in Webster's Patent Cases, 41. So that it has really become, I am very happy to say, entirely clear, that the acceptance of a license and a covenant to pay a tariff leaves the party wholly at liberty to contest it. Yet, I should be ashamed of my cheat if he would stand here to contest these covenants on the ground that it is not an estopal at law, if he could not at the same time lay his band on his heart, and say that he found other reasons in his own golden rule of doing as he would be done by. That prescribed and warranted his taking up this line of defence—that nakes it a beautiful and biblical defence, which was before nearly absolutely perfect in point of law. Then we are, I think, so far at the cummon case of a bill in Chancery for an infringement, with nothing to estop us or deprive us of all our ordinary rights. I wish now to suggest to the Court in a quiet manner, why this estopal should be set at large, and then I shall be without any disrespect to Mr. Judson. Mr. bay relied on the recital that Goodyear owns and controls everything except these three increes, and he gives my client to understand that if their ficenses are revoked, he (Pay) is then the sole owner, as against the world, of all the licenses that Goodyear owned. I do not know where the evidence is of that; at any rate, that recital was falsified the promain it was made and the covenant that Goodyear owned. I do not know where the evidence is of that; at any rate, that recital was falsified the mement it was made, and the covenant by Goodyear afterwards, in the same instrument, that he would preceed to get in all outstanding rights, was falsified by his afterwards failing to get in those rights. The recital was falsified along with the covenant for obtaining a surrender of outstanding rights by three facts: the first is, sir, that during the progress of these negotiations Mr. Goodyear negotiated and sold to Mr. Judson, without the knowledge of Mr. Bay, one-eighth of everything he owned, and the papers were delivered on the — of —, IS16. Soon after Day commenced operations, Mr. Judson and Mr. Goodyear began to negotiate this assignment of an eighth; and that assignment of an eighth is placed upon the records at Washington before the delivery of the papers to us; so that, if your honors please, when we accepted this contract, on the representation and belief that there was only one party interested in the matter, after the three licenses outstanding were cancelled, against whom we thought we could take precaution, it turned out that we had bought into a concern, one undivided eighth of which was the property of, I dare say, a very respectable gentleman, but whom I must characterize as the bitterest enemy Day had on earth. The preof of that appears upon the brief. In the next place, he had broken the same ceitais, and the same covenants, and the brief must disclose that proof also, by a saie to a certain Mr. Dorr, in 1844, of a quarter part of all his interest here, and, at hough he had undertaken to qualify that same, by stipulating that Mr. Dorr should not sell or dispose of what he had bought, I take it for granted hat Mr. Dorr might have worked to his heart's content in the process of corrugating goods under that

in the total season and be valcanized by subjecting it to the heat of a vapor bath, but not by the dry he at of Goodycar's patent. I leave this point on the evidence as it stands before the close of my part of this discussion, that there is no special matter on the bill or in the proofsto conclude the defendant from a trial of his right somewhere, on the merits of the case. I submit, too, that the plaintiff is to have no injunction until he has established his right to it by a trial at law. Your honors will have observed, perhaps, by the way, that the rale is not to send issues from chancery, but to relegate the party to the legal forum at large, Daniel's Chancery Practice, Li20, makes that distinction; and I submit to yours honors, that whereas the parties have already a good honest law suit pending in this court, expressly to try and decrie the validity of Goodycar's titler and, whereas, in addition to this, both parties have for years, and at an immense expense, been making extensive preparation for the trial of every question in that very case, the reason for miling so is entirely conclusive. The special matter than is gone; and now I have to ask the court why the general rule does not attach! Is there may other special reason why we should not be entitled to a trial of the right by a jury at law, in some of the earlier stages, in which this application to ran injunction is made! A long time of exclusive possession has been a good deal relied on. I have not unyself been able to find any such long continued possession as has been alreaded to, that would operate in the hast stage, or on the final hearing, and the influence of which would deprive the party of his right at law; and I respectfully submit that the learning of the plaintiff's counsel has not been an exclusive and peaceful possession of this invention in any special and in the history of the general rule, and where the adjustment, Goodycar got his patent in still in the site of the general rule, where the first had a good deal more that a present o